



Exempt Action Proposed Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5 Chapter 240, Variance for Open Burning
Regulation title	Variance for Open Burning
Action title	Repeal of Variance for Open Burning (Revision I11)
Document preparation date	September 11, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

On March 26, 2007 the board issued a variance (9VAC5 Chapter 240) to provide relief to Gloucester County residents from the regulatory seasonal restrictions on open burning. That variance expired on December 31, 2008. The expired variance still exists as regulation. In order for the state regulations to be administratively correct, 9VAC5-240 must now be repealed.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of the open burning regulation is (i) to limit or, in some instances, prohibit open burning and to establish requirements to restrict emissions of volatile organic compounds (VOCs) and nitrogen oxides (NOx) during the peak ozone season to the level necessary for the protection of public health and

welfare; and (ii) to provide guidance to local governments on the adoption of ordinances to regulate open burning. The purpose of the variance was to provide relief to the residents of the County of Gloucester from the seasonal restrictions in 9 VAC 5-40-5630 A 8 and 10 in order to give the county time (two years) to consider alternatives to open burning. The terms of the variance are no longer applicable, so the existence of the variance can only cause confusion about the applicability of the new open burning regulation (9VAC5 Chapter 130, Regulation for Open Burning). Repeal of the variance will prevent confusion and thereby protect the health and welfare of the public.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email gary.graham@deq.virginia.gov, fax 804-698-4510).

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

With the repeal of 9VAC5 Chapter 240, the effective open burning regulation (9VAC5 Chapter 130) still meets all of the minimum requirements of the federal Clean Air Act and does not differ materially from the pertinent state and federal regulations. A failure to repeal any portion of 9VAC5 Chapter 240 could lead to confusion on the part of regulated businesses, individuals, and communities and would compromise the effectiveness of the open burning requirements in protecting the health and welfare of the public.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability, including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on families.

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